IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Crl.MC.No. 2950 of 2007()

AGAINST THE ORDER IN CMP.NO.5568/2007 IN
CC.134/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KATTAPPANA

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PETITIONER: RESPONDENTS

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1. REJI C.D., S/O.JOHN,
   MANGALASSERIL HOUSE, VELLAYAMKUDY, KATTAPPANA.

2. ROY, S/O.SEBASTIAN,
   KUNNUMPURAM,
   VALIYAKANDOM, VELLAYAMKUDY.

BY ADV. SRI.C.K.PAVITHRAN
SRI.K.BAIJU

RESPONDENTS: STATE AND COMPLAINANT

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1. SUB INSPECTOR OF POLICE,
   KATTAPPANA.

2. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2950 of 2007

Dated this the 25th day of September, 2007

O R D E R

The petitioner faces indictment for the offence punishable under Section 292 I.P.C. The crux of the allegation is that he was found in possession of some obscene video cassettes. Trial was complete. The matter stood posted for judgment, submits the learned Public Prosecutor . At that stage the learned Assistant Public Prosecutor filed an application that the cassettes recovered from the possession of the petitioner may be viewed by the court to enable the court to come to an authentic conclusion about the alleged obscenity. The learned Magistrate by the impugned order, a copy of which is produced as Annexure-A3, allowed the said request and directed that the cassettes be exhibited for perusal of the court.

2. The petitioner claims to be aggrieved by that order. The petitioner has rushed to this Court with this petition under Section 482 Cr.P.C. The learned counsel for the petitioner submits that at this belated stage, such prayer ought not to have been allowed. The learned counsel for the petitioner further submits that the video cassettes had not been marked specifically as a material object or an exhibit in the course of trial.

3. I must alertly remind myself that I am called upon to invoke and exercise the extraordinary inherent jurisdiction under Section 482 Cr.P.C. Such jurisdiction is to be exercised ex debito justitiae. Only when there are sufficient, satisfactory, compelling and exceptional reasons, can this Court invoke such extraordinary inherent jurisdiction. Has justice failed ? Is there miscarriage of justice ? Is there abuse of process of the court ? These are the questions which this Court will consider when a request is made to invoke the powers under Section 482 Cr.P.C. Even the alleged circumstance that the order passed is wrong on facts or in law, will not by itself persuade this Court to invoke such jurisdiction. The law frowns upon separate challenge of interlocutory orders passed in the course of criminal trial and that is reflected clearly in the embargo in Section 397 (2) Cr.P.C against the challenge of interlocutory orders. Normally and ordinarily the litigant will have to wait to challenge the interlocutory order if necessary along with the final orders to be passed. In the facts and circumstances to which I have briefly referred above, I do not find any circumstances that would justify the invocation of the jurisdiction under Section 482 Cr.P.C.

4. In the result, this Crl.M.C is dismissed. Lest any negative message be conveyed, I make it clear that I have not decided to

express any opinion on merits about the correctness or acceptability of the impugned order. The petitioner shall be at liberty to raise all his contention before the learned Magistrate. He shall also be entitled, if necessary, to challenge the impugned order along with the judgment to be passed finally by the learned Magistrate after trial.

(R.BASANT, JUDGE)

rtr/-